

(1965) 10 RAJ CK 0003
In the Rajasthan High Court
Case No : First Appeal No. 48 of 1957

State of Rajasthan

APPELLANT

Vs

Mst. Parwati Devi

RESPONDENT

Date of Decision : 19-10-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Fatal Accidents Act, 1855 — Section 1A

Citation : (1966) RLW 111

Hon'ble Judges : V.P. Tyagi, J; I.N. Modi, J

Bench : Division Bench

Advocate : S.N. Gurtu, for the Appellant; U.M. Trivedi, for the Respondent

Judgement

Modi, J.—An interesting question of law has been raised before us in this appeal on behalf of the legal representatives of the deceased respondent Mst. Parwati Devi that this appeal has abated under Order 22 of the CPC and should, therefore, be dismissed as such. The question arises in the following circumstances:

2. Mst. Parwati Devi, widow of Navneetlal brought the suit in forma pauperis, out of which this appeal arises, against the defendant State for recovery of damages amounting to Rs. 20,000 under the Fatal Accidents Act (No. 13 of 1855) (hereinafter called the Act). It is sufficient to state for our present purposes that the case of the plaintiff was that her husband Navneetlal was employed as a clerk in the office of the Executive Engineer, Public Works Department at Bhilwara, and while he was travelling on official business in truck No. RJE 131 belonging to the State on the 19th May, 1952 it caught fire as its engine was defective and some petrol tins were allowed to lie therein which also caught fire and as a result thereof the said Navneetlal had to jump out of the truck and in so doing he struck against a stone and got killed almost instantaneously.

3. The defendant State contested this suit on a number of grounds with which it is unnecessary to dwell at this stage. This suit was decided by the District Judge,

Pratapgarh by his judgment dated the 31st of August, 1957 and a decree was passed in favour of the plaintiff Parwati Devi against the defendant State to the effect that the latter shall pay to the plaintiff Rs. 14,760 together with the costs of the suit.

The State thereupon filed this appeal on the 5th of November, 1957. When it came up for hearing on the 12th of January, 1965, it was brought to the notice of the Court that Mst. Parwati Devi, the sole respondent in the appeal had died as early as the 14th of April, 1960 and that her legal representatives had not been brought on the record and substituted for her within the time permitted by law, and consequently this appeal had abated and must be dismissed as such. The learned Government Advocate on behalf of the State prayed for time to be able to meet this objection which was granted and he filed his reply on the 2nd of March, 1965. It is contended therein that the suit brought by the plaintiff, even though it had been brought in the name of Mst. Parwati Devi alone, was of a representative character and, therefore, the provisions of Order 22 of the CPC would not be applicable to it and the appeal could be continued after the names of the other persons, on whose behalf Mst. Parwati Devi had brought this suit and whose representative she was, were brought on the record. It was contended alternatively that even if the Court came to the conclusion that this appeal had abated, the date of the death of the plaintiff became known to the defendant-appellant only when learned counsel for the legal representatives of the deceased Parwati Devi had brought it to the notice of the Court, that is, on the 12th of January, 1965 and not earlier and consequently the abatement be set aside and the delay in making the application for the substitution of her legal representatives be condoned and their names be substituted in place of the deceased.

4. It is in these circumstances that we are called upon to decide whether this appeal has abated. In support of his submission that an abatement of the appeal has irretrievably taken place as a result of the legal representatives of the deceased Parwati Devi not having been brought on the record within the time allowed by law from her death which admittedly took place on the 14th of April, 1960, learned counsel has placed strong reliance on the decision of their Lordships of the Supreme Court in *The State of Punjab Vs. Nathu Ram*, This was a case under the Punjab Land Acquisition (Defence of India) Rules, 1943. There was certain land which was the joint property of two brothers and which was acquired for military purposes. On a dispute having arisen about the compensation payable in connection with the acquisition, the matter was referred for enquiry to an arbitrator who passed a joint award in favour of the two brothers. The State Government appealed to the High Court. During the pendency of the appeal one of the brothers had died and as his legal representatives were not brought on the record the question arose as to whether the appeal had also abated against the other brother. This is how their Lordships disposed of this point.

"The award of the arbitrator in each of these cases was a joint one..... The result of the abatement of the appeal against Labhu Ram is therefore that his legal representatives are entitled to get compensation on the basis of this award, even if they are to be paid separately on calculating their rightful share in the land acquired, for which this compensation is decreed. Such calculation is foreign to the appeal between the State of Punjab and Nathu Ram. The decree in the appeal will have to determine not what Nathu Ram's share in this compensation is, but what is the correct amount of compensation with respect to the land acquired for which this compensation has been awarded by the arbitrator. The subject-matter for which the compensation is to be calculated is one and the same. There cannot be different assessments of the amounts of compensation for the same parcel of land. The appeal before the High Court was an appeal against a decree jointly in favour of Labhu Ram and Nathu Ram. The appeal against Nathu Ram alone cannot be held to be properly constituted when the appeal against Labhu Ram had abated. To get rid of the joint decree, it was essential for the appellant, the State of Punjab, to implead both the joint decree-holders in the appeal. In the absence of one joint decree-holder, the appeal is not properly framed. It follows that the State appeal against Nathu Ram alone cannot proceed."

5. We should like in this connection to invite attention to an earlier part of their Lordships' judgment wherein it was pointed out that the CPC does not provide for the abatement of the appeal against co-respondents when it has abated against a deceased respondent and, therefore, there can be no question of abatement of appeals against them. They further pointed out that to say that the appeals against such co-respondents abated, was not correct and the only question that really arose in such cases was whether the appeal against the remaining co-respondents was properly constituted. On a careful consideration of the facts and circumstances of the afore-mentioned case and the decision arrived at therein, we are definitely of the opinion that it has no application to the case before us. The decree with which we are called upon to deal with in the present case was not a joint decree, nor was the suit, put of which the decree arose, was filed by the plaintiff Mst. Parwati Devi jointly with any other persons, This suit was filed by her under a definite provision of law, namely, Section 1A of the Act. This section reads as follows:

"1-A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment of decree shall direct."

This section provides a clear departure from the general rule that a right of suit in connection with a personal cause of action dies with the death of such person and enables an executor, administrator or a representative of the deceased person to bring an action for damages for the benefit of the family of the deceased. It seems to us that any lawful representative of the deceased person may bring such an action and wherever it has been so brought, it shall be for the benefit of the wife, husband, parent and child, if any, of the deceased. In these circumstances, we are categorically of the opinion that the suit which is so brought for the benefit of the family of the deceased, even though it may be brought by any one of them, is a representative suit inasmuch as it has been provided by law that it shall be for the benefit of the wife, husband, parent and child, if any, of the deceased. It is important to further point out that the second section of this Act clearly lays down that not more than one action or suit shall be brought for and in respect of the same subject-matter of complaint. The conclusion is, therefore, irresistible that whoever is entitled to bring a suit of this character brings it for the benefit of the relations of the deceased specified in Section 1A of the Act, and it must follow that he represents them all in such a suit. It is against this legal background that the question of the abatement of the appeal, which has been raised before us, falls to be determined.

6. In this connection, we cannot help referring to the analogous class of cases where a suit is brought by a person in a representative capacity, or is brought against him in a representative capacity with the permission of the court under the provisions of Order 1, Rule 8 of the Code of Civil Procedure. Such suits are of a representative character. We have examined a number of cases of this class with reference to the point of abatement arising therein as a result of the death of one of the parties thereto or of a person represented by those who are on the record and the result at which we have arrived is that the consensus of legal opinion is that no question of abatement arises in suits of this character or appeals arising out of them and that Order 22 of the CPC is not attracted into application in such cases at all and, therefore, all that is necessary is to proceed with the suit or appeal with the remaining parties on the record or if there is none on either side then an application can with perfect legal propriety be made

for bringing some or all of the other persons on the record whom the deceased represents. In support of this result, we may refer to the following cases.

7. In Venkatakrishna Reddi and Others Vs. Srinivasachariar and Others, it was held that where sanction is originally given by the Court to a certain number of persons either to prosecute or defend a suit and one of them dies his heirs are not competent to prosecute or defend the suit because the sanction was accorded to certain individual persons "eo nomine" and not to their heirs and unless the order can be construed so as to confer the right on the legal representatives also the right does not survive. It was further laid down that in such a case the proper procedure is for the remaining persons to apply to the Court for directions whether the Court will be pleased to permit the remaining persons to continue to prosecute or defend the suit or to authorise an additional person to do so who need not necessarily be the legal representative of the deceased person. It was further held that to say that in all such cases, first that the legal representatives should be brought on record, and secondly that if they are not brought on record, the suit abates is to defeat the ends of justice.

8. Again, in Surendra Nath Saha and Others Vs. Harendra Kumar Saha and Others, it was laid down that where a representative suit is brought by a plaintiff with leave of Court, then on his death, no substitution is necessary and others who have been granted authority to represent the class can go on and all that is required is that the Court should be apprised of his death.

9. Again, in Jagdam Ram Vs. Asarfi Ram and Others, it was held that if the Court has permitted a certain number of persons to institute or defend a suit in a representative capacity on behalf of others and when some of them either by death or otherwise become incapable to conduct the suit, the suit does not abate even if the legal representatives of such persons are not brought on record within limitation. It was further laid down that the same rule applies to appeals. It is for the Court to order whether or not the remaining persons should be allowed to conduct the case or whether more persons should be added as parties for this purpose, the ratio being that the provisions of Order 22, Civil Procedure Code, which are applicable to suits or appeals by persons in their individual capacity cannot be made applicable to suits or appeals by some persons in representative capacity.

10. The same view was taken in Mehtab v. Ahmad Khan, AIR 1940 Lah 272, wherein it was held that where some of the defendants are appointed to represent the rest of the defendants under Order 1, Rule 8, the death of any of the defendants pendente lite who were represented as aforesaid is immaterial, and that the suit in such circumstances does not abate and can proceed without impleading their legal representatives.

11. Again, in Shiv Rattan Deo Singh v. Shiromani Gurdwara Parbandhak Committee, Amritsar AIR 1950 EP 338, it was held that where the respondents were sued in a representative capacity after due permission of the Court was

obtained according to Order 1, Rule 8, C. P. C. and one of the respondents died pending the appeal, it did not abate partially or as a whole.

12. The last case, to which we should like to refer in this connection, is Abdul Rasid Abdul Gaffar v. Rama Dhin AIR 1954 Nag 211 wherein the same view was taken and it was held that in cases where the appellants are permitted to defend a suit in a representative capacity in accordance with law such an appeal cannot abate because some of the appellants died during its pendency and their legal representatives were not brought on record. Indeed, it was further laid down that when an appeal had been instituted in a representative capacity, the legal representatives of the deceased appellant had no right to be brought on record in the appeal at all.

13. The cases to which we have referred above unmistakably yield the conclusion that in a representative suit brought, for example under Order 1, Rule 8 of the CPC after complying with the requirements of that provision, then the death of any one, or more of the parties to such a suit pending the suit or the appeal, cannot result in the abatement of the suit or the appeal. The principle, which seems to us to have been uniformly accepted in these decisions, is that a suit like this is not brought by or against a person in his personal capacity but is brought by or against him as a representative of a class of persons and even if the representative or representatives who has or have so brought the suit, or against whom a suit is so brought, happens to die, then the other person or persons whom the deceased represented would still be interested in the litigation in the very nature of things and cannot but be held constructively to be parties to the suit, and in this type of case the question of abatement cannot properly arise. We should further like to point out that the principle which applies to suits brought under Order 1, Rule 8 of the CPC with the sanction of the Court should be held equally applicable to a suit like the present which has to be brought by a party in a representative capacity according to substantive law. Both classes of suits are equally representative and must fall to be governed by a like principle. In accordance with the legal position, which we have discussed above, suppose the present suit had been brought by not Parwati Devi alone but by her and another in which case it should have been perfectly proper if on Parwati Devi having died during the pendency of the appeal it were allowed to continue against the surviving respondent. As it has, however, transpired in the case before us, the suit was brought by her alone and, therefore, in order that the appeal may properly be continued, it appears to us to be necessary that some, or all those whom she represented, should be allowed to be brought on the record, for obviously the appeal cannot continue in the absence of any respondent having been brought on the record. As the present suit was brought by Parwati Devi for the benefit of herself and her two sons Shyam Sunder and Madanlal and her daughter Lali and her father-in-law Chatur Bhuj and her mother-in-law Pyari Bai, we consider it safer to order that all those for whose benefit the deceased brought the present suit be allowed to be substituted in her place though, as we have made it abundantly clear, no question of abatement can possibly arise in a

case like the present. We order accordingly. In the view of the matter the alternative contention raised by the State does not arise. For the reasons mentioned above, we hold that the objection raised by the legal representatives of the deceased Mst. Parwati Devi is without any force and we hereby overrule it.

14. The case will be set down for hearing on the merits after due service has been effected on such of the persons whom Parwati Devi represented and have not so far been served.